

# Customs Bulletin

Regulations, Rulings, Decisions, and Notices  
concerning Customs and related matters



## and Decisions

of the United States Court of Customs and  
Patent Appeals and the United States  
Court of International Trade

Vol. 16

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APRIL 7, 1982

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No. 14

*This issue contains*

T.D. 82-51 and 82-52

Erratum

Appeal No. 81-26

Slip Op. 82-15 Through 82-19

Protest Abstracts P82/12 Through P82/24

Reap. Abstracts R82/130 Through R82/152

International Trade Commission Notices

THE DEPARTMENT OF THE TREASURY  
U.S. Customs Service

## NOTICE

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# U.S. Customs Service

## Treasury Decisions

(T.D. 82-51)

### Bonds

Approval and discontinuance of Carrier's Bonds, Customs Form 3587

Bonds of carriers for the transportation of bonded merchandise have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: March 18, 1982.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
All-Pro Transport Lines, Inc., 8900 N.W. 79th Ave., Miami, FL; motor carrier; St. Paul Fire & Marine Ins. Co. D 2/23/82	Jan. 29, 1981	Mar. 13, 1981	Miami, FL \$25,000
Marilyn E. Merrell, dba: American National Brokers, 3400 McIntosh Blvd., Port Everglades, FL; motor carrier; Washington International Ins. Co.	Jan. 26, 1982	Feb. 22, 1982	Miami, FL \$25,000
Antonellis Transportation, Inc., 100 Federal St., Quincy, MA; motor carrier; Aetna Casualty & Surety Co. D 11/20/77	Mar. 30, 1972	Mar. 30, 1972	Boston, MA \$25,000
BD Trucking Co., P.O. Box 817, Ripon, CA; motor carrier; South Carolina Ins. Co.	Dec. 22, 1981	Mar. 3, 1982	San Francisco, CA \$25,000
Belford Trucking Co., Inc., P.O. Box 2009, Ocala, FL; motor carrier; American Druggists Ins. Co. (PB 12/18/80) D 2/17/82	Nov. 5, 1981	Feb. 17, 1982	Miami, FL \$25,000
Brannan Systems, Inc., 751 Stimrod Rd., Mobile, AL; motor carrier; St. Paul Fire & Marine Ins. Co. D 3/2/82	Aug. 28, 1978	Aug. 29, 1978	Mobile, AL \$25,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Brownsville & Metamoras Bridge Co.—See Missouri Pacific Railroad Co.			
Burlington Northern Railroad Co., St. Paul, MN; rail carrier; Continental Casualty Co. (PB 3/2/73) D 2/24/82 <sup>1</sup>	Aug. 28, 1981	Feb. 24, 1982	Seattle, WA \$100,000
CTD, Inc., dba: Statewide Haulers, Inc., 1800 Chicago, Laredo, TX; motor carrier; Royal Indemnity Co. D 2/24/82	June 24, 1981	July 6, 1981	Laredo, TX \$23,000
Cargo Inc., (A DE Corp.) 5645 N. Gage St., Rosemont, IL; freight forwarder; Washington International Ins. Co. D 2/12/82	Jan. 31, 1980	Feb. 1, 1980	Chicago, IL \$50,000
Chicago Heights Terminal Transfer Railroad Co.—See Missouri Pacific Railroad Co.			
Crescent Trucking, Inc., 120 Eastern Ave., Chelsea, MA; motor carrier; Peerless Ins. Co. D 2/21/82	Feb. 21, 1981	Mar. 5, 1981	Boston, MA \$25,000
Doniphan, Kensett & Searcy Railway Co.—See Missouri Pacific Railroad Co.			
ET & WNC Transportation Co., Johnson City, TN; motor carrier; Ins. Co. of North America D 3/2/82	Dec. 9, 1976	Dec. 9, 1976	Baltimore, MD \$25,000
Eagle Motor Lines, Inc., P.O. Box 11086, 830 N. 33rd St., Birmingham, AL; motor carrier; Fidelity & Deposit Co. of MD D 3/4/82	Apr. 9, 1980	Apr. 10, 1980	New Orleans, LA \$25,000
Host International, Inc., 3402 Pico Blvd., Santa Monica, CA; motor carrier; Safeco Ins. Co. of America	Sept. 8, 1981	Feb. 17, 1982	Seattle, WA \$25,000
Inter Trans Corp., P.O. Box 11, Bakersfield, VT; air carrier, St. Paul Fire & Marine Ins. Co.	Sept. 30, 1981	Oct. 15, 1981	St. Albans, VT \$25,000
Kenneth L. Kellar, P.O. Box 449, Blaine, WA; motor carrier; Peerless Ins. Co. (PB 3/15/76) D 3/1/82 <sup>1</sup>	Feb. 26, 1982	Mar. 1, 1982	Seattle, WA \$25,000
R. Lavoie Trucking, Inc., Heater Rd., Lebanon, NH; motor carrier; Nationwide Mutual Ins. Co.	Nov. 5, 1981	Mar. 1, 1982	St. Albans, VT \$25,000
Missouri Pacific Railroad Co., Doniphan, Kensett & Searcy Railroad Co., Brownsville & Metamoras Bridge Co., Chicago Heights Terminal Transfer Railroad Co., Weatherford Mineral Wells & Northwestern Railway Co., 210 N. 13th St., St. Louis, MO; rail carrier; Travelers Indemnity Co. (PB 11/2/78) D 3/1/82 <sup>1</sup>	Mar. 1, 1982	Mar. 1, 1982	St. Louis, MO \$100,000
Normand's City Truck Freightways, Inc., 35 South-west Cutoff, Worcester, MA; motor carrier; Continental Casualty Co. D 2/22/77	Oct. 24, 1969	Dec. 30, 1969	Boston, MA \$25,000

See footnotes at end of table.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Puget Sound Marine Industrial Inc., 2220 So Tacoma Wy, Tacoma, WA; motor carrier; Washington International Ins. Co.	Feb. 16, 1982	Feb. 17, 1982	Seattle, WA \$25,000
Sewell Motor Express, Inc., 149 So. Mulberry St., Wilmington, OH; motor carrier; Cincinnati Ins. Co. D 2/23/82	Dec. 4, 1980	Jan. 7, 1981	Cleveland, OH \$50,000
Statewide Haulers, Inc.—See CTD, Inc.			
Superior Motor Transportation Co., Inc., 69-71 Proctor St., Roxbury, MA; motor carrier; Peerless Ins. Co. D 12/28/77	Oct. 9, 1967	Oct. 9, 1967	Boston, MA \$50,000
Texas Highway Transport, Inc., 2311 Butler, Dallas, TX; motor carrier; St. Paul Fire & Marine Ins. Co.	Nov. 2, 1981	Feb. 19, 1982	Dallas/Fort Worth, TX \$25,000
Tallahoma Freight Co., Inc., 813 Lincoln St., Tullahoma, TN; motor carrier; Hartford Accident & Indemnity Co. D 2/25/82	May 24, 1975	May 24, 1975	New Orleans, LA \$50,000
Dovel Wade, dba: Vol Air Freight, P.O. Box 389, Alcoa, TN; motor carrier; United States Fidelity & Guaranty Co. (PB 1/9/81) D 2/25/82 <sup>5</sup>	Jan. 9, 1982	Feb. 25, 1982	New Orleans, LA \$25,000
Warrior Transport Inc., 2334 Havenhurst, Farmers Branch, TX; motor carrier; Old Republic Ins. Co.	Dec. 3, 1981	Feb. 24, 1982	Dallas/Fort Worth, TX \$25,000
Weatherford Mineral Wells & Northwestern Railway Co.—See Missouri Pacific Railroad Co.			

<sup>1</sup> Surety is Hartford Accident & Indemnity Co.<sup>2</sup> Principal is Burlington Northern, Inc.<sup>3</sup> Surety is St. Paul Fire & Marine Ins. Co.<sup>4</sup> Principal is Missouri Pacific Railroad Co., Doniphan, Kensett & Searcy Railway Co., Brownsville & Metamoras Bridge Co.; Surety is Safeco Ins. Co. of America.<sup>5</sup> Surety is Nationwide Mutual Ins. Co.

BON-3-03

GEORGE C. STEUART  
(For Marilyn G. Morrison, Director,  
Carriers, Drawback and Bonds Division).

19 CFR Part 6

(T.D. 82-52)

Private Aircraft Arriving in the United States

AGENCY: U.S. Customs Service, Department of the Treasury.

**ACTION: Interim Regulation.**

**SUMMARY:** This document amends the Customs Regulations to extend the area of entry from which private aircraft arriving in the United States must furnish a notice of intended arrival to Customs. Current regulations provide for a notice of intended arrival for private aircraft arriving in the United States via the United States/Mexican border. This amendment extends the notice requirement to private aircraft arriving in the United States via the Gulf of Mexico and Atlantic Coasts. The amendment further provides that the aircraft required to furnish such notice must land for Customs processing at the nearest designated airport to the crossing point. The current regulation provides for landing at any of the designated airports. The list of designated airports has been expanded.

The amendment is necessary because of the severity of the drug abuse problem, the major increase in illegal drug importations, and the need for immediate action to expand the effectiveness of drug smuggling enforcement.

**EFFECTIVE DATE:** April 1, 1982.

**COMMENTS:** The amendment is being published as an interim regulation, effective on April 1, 1982. However, written comments received before (60 days from the date of publication) will be considered in determining whether any changes to the regulation are required before a permanent rule is published.

**FOR FURTHER INFORMATION CONTACT:** Sidney A. Reyes or Arnold L. Sarasky, Office of Inspection, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-5607).

**SUPPLEMENTARY INFORMATION:****BACKGROUND**

The National Narcotics Intelligence Consumers Committee has documented that the supply of illegal drugs to the United States market and the subsequent extent of drug abuse has reached monumental proportions. Illegal drugs generated an estimated \$80 billion in retail sales in 1980, a 23 percent increase from 1979. The severity of the drug abuse problem, the preponderance of drug users and the major increases in volumes of illegal drug importations in the United States are indicated by the significant increase in drug-related deaths, medical care, arrests, and seizures.

The smuggler organization has solidified a dominant position in the United States through the penetration of strategic points in the

economy. Countries to the south of the United States are major sources of illegal drugs destined for the United States. Smuggling by air is the preferred mode of transportation for low volume, high-cost narcotics. Private aircraft account for the highest volume and largest individual loads of these drugs. A Stanford Research Institute Study indicates the magnitude of the air smuggling threat at approximately 6,700 flights annually, involving approximately 1,000 private aircraft. Although recent air interdiction activities in the southeastern United States have resulted in many arrests and seizures, an end to the present situation of drug abuse in the United States is not in sight.

In order to address this national problem, it is necessary to take immediate action to expand the effectiveness of smuggling enforcement. In 1975, the Customs Regulations were amended by adding a new section 6.14 (19 CFR 6.14), to provide for a notice of intended arrival for private aircraft arriving in the United States via the United States/Mexican border. Section 6.14 further provides that such private aircraft land at one of 14 designated airports along the United States/Mexican border. Because of the magnitude of the drug problem, the notice and landing requirements are being extended to private aircraft arriving in the United States via the Gulf of Mexico and Atlantic Coasts. Additional airports are being designated. The amendment to section 6.14 is being made in direct response to Executive and Congressional directives. The amendment will provide the Customs Service positive entry control to increase enforcement capability by identifying private aircraft which may be involved in smuggling activity. Further information concerning the aircraft reporting requirements may be found in the "U.S. Customs Guide for Private Flyers" which is available from any Customs office.

#### COMMENTS

Before adopting the regulation as a permanent rule, consideration will be given to any written comments timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with section 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9:00 a.m. to 4:30 p.m. at the Regulations Control Branch, Customs Service Headquarters, Room 2426, 1301 Constitution Avenue NW., Washington D.C. 20229.

#### INAPPLICABILITY OF NOTICE AND DELAYED EFFECTIVE DATE PROVISIONS

Because of the severity of the drug abuse problem, the major increase in illegal drug importations, and the need for immediate action to expand the effectiveness of drug smuggling enforcement, it has

been determined that, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are impracticable, unnecessary, and contrary to the public interest. For the same reasons, pursuant to 5 U.S.C. 553(d) (3), a delayed effective date is being dispensed with.

#### E.O. 12291 AND REGULATORY FLEXIBILITY ACT

Inasmuch as Customs does not believe that the amendment meets the criteria for a "major rule" within the meaning of section 1(b) of E.O. 12291, a regulatory impact analysis has not been prepared.

Because of the need to expedite the issuance of this regulation, Customs has not yet been able to determine if the regulation will have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601-612). However, we will continue to review this matter and will consider any comments submitted thereon before issuing a final rule.

#### DRAFTING INFORMATION

The principal author of this document was Gerard J. O'Brien, Jr., Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

#### AMENDMENTS TO THE REGULATIONS

Section 6.14, Customs Regulations (19 CFR 6.14), is revised as set forth below:

##### PART 6—AIR COMMERCE REGULATIONS

Section 6.14 is revised to read as follows:

6.14 Private aircraft arriving from areas south of the United States.

(a) *Advance report of penetration of United States airspace via United States/Mexican border.* All private aircraft arriving in the United States via the United States/Mexican border from a foreign place in the Western Hemisphere south of 33 degrees north latitude and between 97 degrees and 120 degrees west longitude shall furnish a notice of intended arrival to the Customs Service at the nearest designated airport listed in paragraph (g) of this section for first landing in the United States at least 15 minutes prior to crossing the United States/Mexican border. The notice may be furnished directly to Customs by telephone, radio, or other means, or may be furnished through the Federal Aviation Administration to Customs.

(b) *Advance report of penetration of United States airspace via Gulf and Atlantic Coasts.* All private aircraft arriving in the United States via the Gulf of Mexico and Atlantic Coasts from a foreign place in the Western Hemisphere south of 31 degrees north latitude shall furnish a notice of intended arrival to the Customs Service at the nearest designated airport listed in paragraph (g) of this section for first landing in the United States. Such notice to Customs may occur anytime while aircraft is within the Gulf of Mexico Coastal or Atlantic Coastal ADIZ (Air Defense Identification Zones), but must occur at least 15 minutes prior to crossing the United States coastline. The notice may be furnished directly to Customs by telephone, radio, or other means, or may be furnished through the Federal Aviation Administration to Customs.

(c) *Notice to Customs.* The notice to Customs required by paragraphs (a) and (b) of this section shall include the following;

- (1) Aircraft registration number;
- (2) Name of aircraft commander;
- (3) Number of United States citizen passengers;
- (4) Number of alien passengers;
- (5) Place of last departure (foreign);
- (6) Estimated time and location of crossing United States border/coastline;
- (7) Name of intended United States airport of first landing (one of the designated airports listed in paragraph (g) of this section, unless an exemption has been granted in accordance with paragraph (f) of this section); and
- (8) Estimated time of arrival.

(d) *Landing requirement.* Private aircraft required to furnish a notice of intended arrival in compliance with paragraphs (a), (b), and (c) of this section shall land for Customs processing at the nearest designated airport to point of crossing as listed in paragraph (g) of this section, unless exempted from this requirement in accordance with paragraph (f) of this section. In addition to the requirements of this paragraph, private aircraft commanders must comply with all other landing and notice of arrival requirements.

(e) *Private aircraft defined.* For the purpose of this section, "private aircraft" means any aircraft other than an aircraft engaged in the transportation of passengers or cargo, or both, for hire.

(f) *Exemption from the landing requirement.* The owner or aircraft commander of a private aircraft required to furnish a notice of intended arrival in compliance with paragraphs

(a), (b), and (c) of this section may request an exemption from the landing requirement specified in paragraph (d) of this section. The request shall be submitted to the Customs officer in charge of the airport of first landing at which Customs processing is required and shall be submitted at least 30 days prior to the anticipated first arrival if the request is for an exemption covering a number of flights over a period of 1 year, or at least 15 days prior to the anticipated arrival if the request is for a single flight. The request shall include the following information:

- (1) Aircraft registration number;
- (2) Identity of aircraft (make and model number);
- (3) Names and addresses of owners of the aircraft;
- (4) Names and addresses of all crewmembers;
- (5) Names of usual or potential passengers to the extent possible;
- (6) Name of airport of first landing in the United States; and
- (7) Place or places for which the flight(s) will originate.

(g) *Designated airports.*

#### Location and Name

Beaumont, Tex., Jefferson County Airport  
 Brownsville, Tex., Brownsville International Airport  
 Calexico, Calif., Calexico International Airport  
 Corpus Christi, Tex., Corpus Christi International Airport  
 Del Rio, Tex., Del Rio International Airport  
 Douglas, Ariz., Bisbee-Douglas International Airport  
 Eagle Pass, Tex., Eagle Pass Airport  
 El Paso, Tex., El Paso International Airport  
 Fort Lauderdale, Fla., Fort Lauderdale International Airport  
 Houston, Tex., Hobby Airport  
 Key West, Fla., Key West Airport  
 Laredo, Tex., Laredo International Airport  
 McAllen, Tex., Miller International Airport  
 Miami, Fla., Miami International Airport and Opa-Locka Airport  
 New Orleans, La., Moissant Airport  
 Nogales, Ariz., Nogales International Airport  
 Presidio, Tex., Presidio-Lely International Airport  
 San Diego, Calif., Brown Field and San Diego International Airport (Lindbergh Field)  
 Tampa, Fla., Tampa International Airport  
 Tucson, Ariz., Tucson International Airport

West Palm Beach, Fla., West Palm Beach Airport  
Yuma, Ariz., Yuma International Airport

(R.S. 251, as amended, sec. 624, 46 Stat. 759, sec. 1109, 72 Stat. 799, as amended (19 U.S.C. 66, 1624, 49 U.S.C. 1509))

CHARLES C. HACKETT, JR.,  
*Adjutant Commissioner of Customs.*

Approved: March 19, 1982.

JOHN M. WALKER, JR.,  
*Assistant Secretary of the Treasury.*

[Published in the Federal Register Mar. 24, 1982 (47 FR 12620)]

### ERRATUM

In CUSTOMS BULLETIN Volume 15, No. 37, dated September 16, 1981, T.D. 81-236, page 18, please insert this rate of exchange:

Germany deutsche mark:

August 10, 1981.....	\$0.389029
August 11, 1981.....	.890778
August 12-14, 1981.....	Quarterly

### ERRATUM

In CUSTOMS BULLETIN Volume 16, No. 11, dated March 17, 1982, page 33, paragraph starting with "DATES": should read as follow: "comment must be received on or before May 3, 1982"; also page 78, the date published in the Federal Register should be "March 4, 1982 (47 FR 9225)"

# Decisions of the United States Court of Customs and Patent Appeals

(Appeal No. 81-26)

C. J. TOWER & SONS OF BUFFALO, INC. *v.* THE UNITED STATES

1. CLASSIFICATION—IMPORTED HOG WATERERS AS “VALVES”—  
REVERSED

Judgment of the United States Court of International Trade that imported hog waterers were properly classified as “valves” under item 680.22, TSUS, is reversed.

2. DETERMINATION OF “MORE THAN”—COMMON MEANING OF  
TARIFF TERM

To determine if an article is “more than” that provided for in a particular tariff provision, the common meaning of the tariff term must be determined and compared with the imported merchandise before the court.

3. *Id.* QUESTION OF LAW

What constitutes the common meaning of a tariff term is a question of law, and the court may consult dictionaries, scientific authorities, and other reliable information to ascertain that common meaning.

4. *Id.* MEANING OF TERM “VALVE”

Realistic concept of the common meaning of the term “valve” is set forth in Webster's *Third New International Dictionary*, i.e., “any of numerous mechanical devices by which the flow of liquid, air or other gas, or loose material in bulk may be started, stopped, or regulated by a movable part that opens, shuts, or partially obstructs one or more parts of passageways.”

5. HOG WATERERS “MORE THAN” VALVES

Imported hog waterers which are the subject of this appeal are “more than” valves.

6. DISPOSITION OF ALTERNATIVE CONTENTION RATHER THAN REMAND

Remand could be ordered for determination of the merits if the

issue raised by the Government's alternative contention; however, in the interest of judicial economy, alternative contention will be disposed of herein.

#### 7. USE PROVISION QUALIFIED BY N.S.P.F. CLAUSE

Where there is a use provision qualified by a "not specially provided for" clause competing with a descriptive provision, the descriptive provisions prevails unless it describes the merchandise in such vague and general terms that it cannot be held to specially provide for such goods.

#### 8. ID. "SIMILAR DEVICES" PROVISION

The "similar devices" provision of item 680.22, TSUS, is not sufficiently specific to "specially provide" for the articles it contains; therefore, even if the imported hog waterers could be considered encompassed by that portion of item 680.22, TSUS, the goods are still classifiable as "agricultural \* \* \* implements not specially provided for" under item 666.00, TSUS.

F. 2d

C. J. TOWER & SONS OF BUFFALO, INC., APPELLANT v. THE  
UNITED STATES, APPELLEE

No. 81-26

United States Court of Customs and Patent Appeals, March 18, 1982, Appeal from United States Court of International Trade.

[Reversed]

*Robert A. Vanderhye*, of Washington, D.C., attorney for appellant.

*J. Paul McGrath*, Asst. Atty. General, *David M. Cohen*, Director, *Joseph I. Liebman*, Attorney-in-Charge, and *Jerry P. Wiskin*, of New York, New York, attorneys for appellee.

[Oral argument on February 1, 1982 by *Robert A. Vanderhye* for appellant and *Jerry P. Wiskin* for appellee.]

Before Markey, *Chief Judge*, RICH, BALDWIN, MILLER, and NIES, *Associate Judges*.

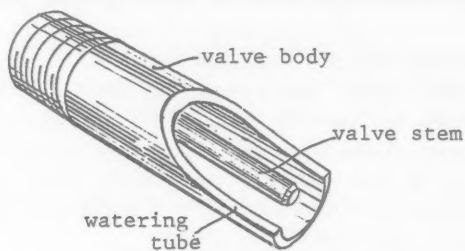
BALDWIN, *Judge*.

[1] This matter is before us on appeal by C. J. Tower & Sons of Buffalo, Inc. (appellant) from the judgment of the United States Court of International Trade, 1 CIT—, 520 F. Supp. 1211 (1981). The court held that the imported merchandise (invoiced as automatic livestock waterers or animal nipple drinkers) was properly classified as "valves" under item 680.22 of the Tariff Schedules of the United States

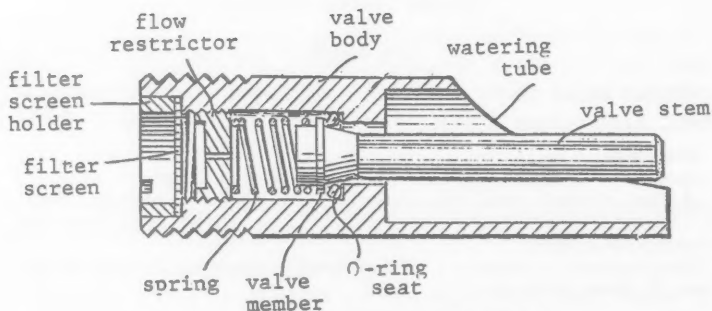
(TSUS)<sup>1</sup> and thus was excluded from duty-free classification under item 666.00, TSUS, as "agricultural \* \* \* implements not specially provided for." We reverse.

### BACKGROUND

The imported merchandise illustrated below, is used to supply water to hogs on demand.



PERSPECTIVE VIEW



CROSS-SECTIONAL VIEW

In use the waterer is connected to a pressurized water supply and is activated to deliver flow-regulated clean water directly into a hog's mouth by the hog's placing its mouth over the bevel-shaped watering tube and biting down on the valve stem. Such biting causes an opening

<sup>1</sup> Item 680.22 provides in pertinent part as follows:

Taps, cocks, valves, and similar devices, however operated, used to control the flow of liquids, gases, or solids, all the foregoing and parts thereof:  
Hand-operated and check, and parts thereof:

680.22

Other..... 11% ad val.

between the valve member and its O-ring seat, thus allowing water to flow from the supply through the filter screen and the flow restrictor, through the valve portion, and into the watering tube. The filter screen removes from the fluid flow particulate matter which may lodge in the flow restrictor orifice or otherwise cause waterer malfunctioning. The flow restrictor functions to reduce the fluid flow of the pressurized water that is to be delivered to the hog's mouth. The watering tube functions to deliver water directly into the animal's mouth. Additionally, by shielding the valve stem, the watering tube protects against accidental actuation of the waterer.

According to the court below, the record established that the hog waterer in issue is an agricultural implement within the intentment of Congress; however, the court stated that Congress did not intend free entry under item 666.00, TSUS, to every agricultural implement, noting the language of headnote 1, Part 4, Subpart C of Schedule 6, TSUS, i.e., "[t]he provisions of item 666.00 for 'agricultural and horticultural implements not specially provided for' do not apply \* \* \* to any of the articles specially provided for elsewhere in the tariff schedules."

After citing Webster's *Third New International Dictionary* definition of "valve" and the description of valves in the *Summaries of Trade and Tariff Information* (1969), and a statement in the latter about item 680.22, TSUS, the court determined that "Congress intended to encompass within the tariff provisions for taps, cocks, valves and similar devices those articles used to control the flow of liquids, etc." 520 F. Supp. at 1216. The court found that to control the flow of liquids, etc. was "the primary and sole purpose of the imported merchandise." 520 F. Supp. at 1216. As such, according to the court below, the hog waterer in issue was not "more than" a "valve," and thus was provided for under item 680.22, TSUS, and excluded from classification under item 666.00, TSUS.

Finding for the Government on the issue that the imported merchandise was a "valve," the court concluded that it was unnecessary to consider the Government's alternative contention that the hog waterer was a device similar to a valve and thus encompassed by item 680.22, TSUS, or to consider other positions urged by both parties.

While stating that the opinion of the court below properly summarizes the testimony in the case, properly states that the chief use of the imported merchandise is as an agricultural implement, and properly sets forth the standard applied when considering the "more than" doctrine, appellant argues on appeal that the court improperly concluded that the imported merchandise was not "more than" a "valve."

Appellant contends that:

[T]he court erred in *not* (a) specifically finding any additional physical features of the imported merchandise over the common definition of the term in the assessed tariff provision, (b) evaluating differences in character and function of the determined physical differences, and (c) determining whether or not the determined physical differences—in conjunction with differences in character or function resulting therefrom—dedicate the merchandise to a particular use, rendering it useless for other purposes.

Continuing, appellant states that the record shows there are four major parts of the imported merchandise: a valve, a watering tube, a flow restrictor, and a filter; states that with the particularly constructed water tube, the flow restrictor, and the filter of the hog waterer there are three important physical differences between the imported merchandise and the "taps, cocks, or valves" of item 680.22, TSUS; and states that the functions of the three distinguishing physical features are clearly distinct from the functions of a valve.

Appellant maintains that the valve portion of its waterer is the least important of the four major parts used in performing the waterer's primary function of delivering a clean, flow-regulated water supply directly into a hog's mouth.

Appellant then concludes its primary argument by stating that:

The significant physical distinctions between the imported merchandise and taps, cocks, and valves, and the differences in function and character that those physical distinctions impart to the merchandise, dedicate the imported merchandise to the exclusive use of watering animals, particularly hogs, and thus the imported merchandise is clearly "more than" a valve under the precedents.

The Government, of course, argues that the imported merchandise is classifiable as a "valve" under item 680.22, TSUS. It contends that since the common meaning of the term "valve" is a mechanical device for starting, stopping, or regulating the flow of water or any other liquid through a pipe or passageway and since the waterer's primary and sole purpose is to control the flow of liquids, the imported merchandise comes within the common meaning of the term "valve."

Regarding the "more than" issue, the Government maintains that to the extent the waterer has a function other than a valve function, it is "more than" a "valve" only if the second function is coequal and not incidental, subsidiary, or auxiliary. The Government asserts that the function of the imported merchandise's watering tube is that of a spout which merely facilitates the valve function and is incidental to the primary valve function. Similarly, the filtering function of the filter screen and the flow restrictor's function are

merely incidental to the waterer's primary function, i.e., to control the flow of a liquid. Thus, according to the Government, the waterer is not "more than" a "valve."

Finally the Government argues that even if the imported merchandise is not a "valve," it is still properly classifiable under item 680.22, TSUS, as a device similar to a valve.

#### OPINION

[2] As properly stated by the court below, to determine if an article is "more than" that provided for in a particular tariff provision, the common meaning of the tariff term must be determined and compared with the imported merchandise before the court. *See, e.g., Ozen Sound Devices v. United States*, 67 CCPA 67, C.A.D. 1246, 620 F. 2d 880 (1980).

[3] Furthermore, it is well settled that what constitutes the common meaning of a tariff term is a question of law and that the court may consult dictionaries, scientific authorities, and other reliable information sources to ascertain that common meaning. *Schott Optical Glass, Inc. v. United States*, 67 CCPA 32, C.A.D. 1239, 612 F. 2d 1283 (1979).

In ascertaining the common meaning of the term "valve" of item 680.22, TSUS, the court below concluded that *any* device which is used to control the flow of liquids would be a "valve." Such a definition for a valve is extremely broad, encompassing any structure or structures which in any way would contain, control, or otherwise affect a body of water or its flow, many of which would not and could not normally be considered a valve: for example, an orifice in a pipe (similar to appellant's flow restrictor), a hose, a water pump, a seawall, a castle moat, or the Erie Canal. As broadly defined, the term "valve" would also encompass the imported hog waterer since it does, in fact, control the flow of water.

[4] We believe a more realistic concept of the common meaning of the term "valve" is the one urged by appellant and set forth in Webster's *Third New International Dictionary* (also quoted by the court below):

Valve \* \* \* b(1) : any of numerous mechanical devices by which the flow of liquid, air or other gas, or loose material in bulk may be started, stopped, or regulated by a movable part that opens, shuts, or partially obstructs one or more parts or passageways.

The court below broadly categorized the hog waterer's primary and sole purpose to be one of controlling the flow of liquids on one occasion (560 F. Supp. 1216) and also stated that the record established "to the satisfaction of the court that the sole and, therefore, chief use of the imported merchandise is to supply water to hogs."

560 F. Supp. 1214. While both statements are true, a more specific representation of the imported merchandise's primary function as shown by the evidence of record is that the device functions to deliver a clean, flow-regulated supply of drinking water directly into an animal's mouth on demand.

[5] Comparing the common meaning of the term "valve" as defined above with appellant's hog waterer and its specific function, it is clear that the hog waterer is "more than" a "valve." While containing a valve to turn on and off the water flow (see particularly the valve stem, O-ring seat and valve member portions denoted in the illustration above), the waterer also incorporates a watering tube, a flow restrictor, and a filter in order to accomplish its specific function.

The watering tube functions, by operating in conjunction with the valve stem, to deliver water directly into the hog's mouth on demand and to protect against accidental operation of the waterer by shielding the valve stem. These functions are not related to the function of a valve per se. The flow restrictor functions to reduce the fluid flow of the pressurized water that is to be delivered to the hog's mouth, a function completely different from that of a valve. The filter screen removes from the fluid flow particulate matter which may lodge in the flow restrictor orifice or otherwise cause malfunctioning of the waterer.

All three of these physical features are clearly distinct from a mere valve function in that they are not related to the control of fluid flow "by a movable part that opens, shuts, or partially obstructs one or more parts or passageways." Webster's *Third New International Dictionary*, supra. Additionally, appellant's hog waterer would not function as intended without the use of these three components.<sup>2</sup> Therefore, considering the specific function of the imported merchandise and the collective effect of the watering tube, flow restrictor, and filter screen, all of which cannot be considered incidental, subsidiary, or auxiliary to a valve function, we conclude that appellant's hog waterer is "more than" a "valve."<sup>3</sup> Accordingly, the imported

<sup>2</sup> On the contrary, appellant's evidence establishes that even without the valve portion of the hog waterer, the merchandise would perform its intended function of delivering a clean, flow-regulated supply of drinking water directly into an animal's mouth on demand. In fact, according to the evidence, pigs are taught to drink from the waterer by the rendering of the valve portion inoperative so that the device delivers a constant, flow-regulated stream through the watering tube.

<sup>3</sup> *Durst Industries, Inc. v. United States*, 73 Cust. Ct. 160, C.D. 4568 (1974), an opinion by the predecessor to the court below, is cited by the Court of International Trade and the Government as support for the position that the imported merchandise is classifiable within item 680.22, TSUS. However, in *Durst*, the combination faucets were found properly classifiable as "taps" or "cocks", under item 680.20, TSUS (a provision identical to item 680.22, TSUS, considered in this appeal, except for the requirement that the goods be of copper); and while the center-set faucets were "more than" taps or cocks, they were found to be classifiable as "similar devices" to taps, cocks, or valves under item 680.20, TSUS. In the present appeal we are not concerned with taps or cocks. Additionally, as we establish subsequently in this opinion, it is immaterial whether or not the imported merchandise is a device similar to taps, cocks, or valves since the "similar devices" provision is not sufficiently specific to "specially provide" for the goods to exclude them from item 680.00, TSUS.

merchandise is not encompassed by the "valve" provision of item 680.22, TSUS.

Such a ruling leads us to the Government's alternative contention, i.e., even if the imported merchandise is "more than" a "valve," it is nevertheless still classifiable under item 680.22, TSUS, as a device similar to a valve.<sup>4</sup> Specifically, the Government argues that the imported merchandise is "specially provided for" under the "similar devices" provision of item 680.22, TSUS, and thus excluded from classification under item 666.00, TSUS.

[7] Where there is a use provision qualified by a "not specially provided for" clause competing with a descriptive provision, the descriptive provision prevails unless it describes the merchandise in such vague and general terms that it cannot be held to specially provide for such goods. See, *United States v. Miracle Exclusives, Inc.*, 69 CCPA —, — F. 2d — (Slip Op. No. 81-17, December 30, 1981) and *United States v. Lansen-Naev Corp.*, 44 CCPA 31, 34, C.A.D. 632 (1957).

Here we have the language of headnote 1, Part 4, Subpart C of Schedule 6, TSUS, *supra*, which excepts from item 666.00, TSUS, only items *specially* provided for elsewhere. And we have the "similar devices" provision of item 680.22, TSUS, which concern "devices [similar to taps, cocks, and valves], however operated, used to control the flow of liquids, gases or solids, all the foregoing and parts thereof: Hand-operated and check, and parts thereof: \* \* \* other," a very broad and nebulous classification. [8] The "similar devices" provision of item 680.22, TSUS, is not sufficiently specific to "specially provide" for the articles it contains. Thus, *even if* the imported merchandise could be considered encompassed by that portion of item 680.22, TSUS, the imported merchandise is still classifiable as "agricultural \* \* \* implements not specially provided for" under item 666.00, TSUS.

#### CONCLUSION

The judgment of the Court of International Trade that the imported merchandise is not properly classifiable under item 666.00, TSUS, is *reversed*.

[6] <sup>4</sup> As noted previously, the court below did not reach this issue. A remand could, therefore, be ordered for the determination of the merits of the issue by the lower court. The Government urges this court, in the interest of judicial economy, to determine this alternative contention (if it must be reached) as a matter of law without remand. We agree with the Government regarding the lack of necessity for a remand and will dispose of this alternative contention herein.

# United States Court of International Trade

One Federal Plaza  
New York, N.Y. 10007

*Chief Judge*

Edward D. Re

*Judges*

Paul P. Rao  
Morgan Ford  
Scovel Richardson  
Frederick Landis

James L. Watson  
Herbert N. Maletz  
Bernard Newman  
Nils A. Boe

*Senior Judge*

Samuel M. Rosenstein

*Clerk*

Josept E. Lombardi

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## Decisions of the United States Court of International Trade

(Slip Op. 82-15)

COMMITTEE TO PRESERVE AMERICAN COLOR TELEVISION (a.k.a.  
COMPACT) et al., plaintiffs v. UNITED STATES, defendant

Before MALETZ, *Judge*.

Court No. 81-3-00258

*Memorandum and Order on Defendant's  
Motion for a Protective Order*

(Dated March 8, 1982)

MALETZ, Judge: Defendant moves under rule 26(c) for a protective

order relieving it of the need to comply with plaintiffs' request to be furnished copies of certain computer printouts prepared by the Customs Service, the Department of Commerce and/or the Office of the United States Trade Representative in connection with the administration of T.D. 71-76. The printouts in question, as defendant points out,

Relate to two separate periods of time—1978-79 and 1980. They contain either the basic input data or the results of computer calculations. The 1978-79 results show total figures for foreign market value, purchase price or exporter's sales price or antidumping duties due either per entry or for a particular importer. The 1980 results show the total estimated antidumping duty due of \$138.7 million \* \* \*.

Defendant argues that plaintiffs have failed to show the relevance of the requested printouts; that in any event the materials are available for inspection at the Department of Commerce; and that plaintiffs have failed to show a need to be furnished copies thereof. In this last regard, defendant states that the request for copies would constitute an undue burden since it estimates that the cost of reproduction is at least \$2,000.

Plaintiffs, on the other hand, contend that the printouts are extremely relevant and will be offered in evidence at trial; that they must be examined in great detail to prepare for depositions and trial, that the request is not burdensome; and that plaintiffs will be prejudiced if they are not provided with copies of the printouts.

Rule 26(b)(1) provides that "parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action \* \* \*." On this aspect, discovery to date has established that the computer study in question was a means by which the government calculated that the maximum amount of dumping duties that could be claimed was \$138.7 million. This in turn was a key factor in the settlements on April 28, 1980 for \$77 million. Thus, the court is persuaded that the printouts in question are relevant in this action. What is more, any burden on defendant necessitated by the cost of reproduction will be avoided by requiring plaintiffs to pay for such cost.

The court therefore orders as follows:

1. Defendant's motion for a protective order is denied.
2. Defendant shall reproduce and deliver to plaintiffs copies of the computer printouts in question within 15 days of the date of this order on condition that plaintiffs pay defendant for the cost of reproduction.

(Slip Op. 82-16)

COMMITTEE TO PRESERVE AMERICAN COLOR TELEVISION (A.K.A.  
COMPACT) ET AL., PLAINTIFFS, v. UNITED STATES, DEFENDANT

Court No. 81-3-00258

Before MALETZ, Judge.

*Memorandum and Order on Plaintiffs' Motion to Compel Deposition  
Testimony*

(Dated March 10, 1982)

MALETZ, Judge: Plaintiffs move, pursuant to rule 37, to compel testimony in deposition upon oral examination from Lynn Barden, Assistant General Counsel for Import Administration, United States Department of Commerce,<sup>1</sup> regarding matters transpiring after the April 28, 1980, settlement agreements but which plaintiffs maintain relate to defendant's interpretation and implementation of the agreements.

During the deposition of Mr. Barden on January 20, 1982, plaintiffs questioned Mr. Barden regarding a memorandum, dated August 14, 1980, directed to him from Leonard Shambon, Director of the Office of Compliance, Department of Commerce. The memorandum contained the statement "we do not intend to use the Commodity Tax Base henceforth." Plaintiffs asked Mr. Barden "when was a decision made not to use the commodity tax base henceforth?" Defendant objected to the question and directed Mr. Barden not to answer.

Plaintiffs argue that the question was asked of Mr. Barden to determine the meaning of the term "traditional methodology" in paragraph 6(h) of the settlement agreements. That paragraph, more specifically, provides "[t]hat the United States shall utilize the traditional methodology in calculating foreign market values \* \* \*" with respect to the appraisal and liquidation under T.D. 71-76 of entries of television receivers from Japan subsequent to March 31, 1979.

Defendant contends that the information sought by plaintiffs is not relevant or necessary for the purposes of this litigation and that such information relates solely to Department of Commerce proceedings under section 751 of the Tariff Act of 1930, as amended (19 U.S.C. §1675) which were conducted subsequent to the April 28, 1980, settlement agreements and involved entries not covered by the agreements. Defendant claims that plaintiffs through this line of inquiry seek discovery for use in *Zenith Radio Corporation v. United*

<sup>1</sup> Mr. Barden had been employed in the Office of the General Counsel, United States Department of the Treasury, prior to January 1, 1980 and in both capacities, he was involved in the administration of T.D. 71-76.

*States*, Consolidated Court No. 81-6-00734, where, in an action challenging the Department of Commerce's section 751 determination, defendant's motion for a protective order to prevent plaintiffs from conducting discovery is now pending before Judge Landis.

Against this background, the court fails to see how the information sought from Mr. Barden would bear upon the meaning of the term "traditional methodology" in paragraph 6(h) of the settlement agreements. Indeed, the meaning of that term does not even appear to be an issue. Added to that, in the course of both Mr. Barden's deposition on January 20, 1982 (pp. 123, 124) and Mr. Moyer's deposition on February 4, 1982 (p. 500), counsel for both *Compact* and *Zenith* made it plain that there is a distinction between the "traditional methodology" method of calculating foreign market value and the "commodity tax" method. In light of this distinction, plaintiffs' question to Mr. Barden with respect to when a decision was made not to use the commodity tax base henceforth would hardly seem to shed light on the meaning of the term "traditional methodology" or of any other term in the settlement agreements.

Beyond this, plaintiffs argue that a further statement in the Shambon memorandum of August 14, 1980, coupled with two letters to the Department of Commerce from attorneys for importers, demonstrate that deposition discovery is required of Mr. Barden to determine whether an intent existed on the part of the government to violate this court's injunction. The court has examined each of the three documents in question and concludes that plaintiffs' contention is without merit.

For the foregoing reasons, plaintiffs' motion to compel the testimony in issue is hereby denied.

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(Slip Op. 82-17)

JACK TYLER, VICE PRESIDENT, UAW 1660, ITT HANCOCK INDUSTRIES,  
PLAINTIFF, v. RAYMOND J. DONOVAN, UNITED STATES SECRETARY  
OF LABOR, DEFENDANT

Court No. 81-6-00712

Before RE, Chief Judge.

*On Defendant's Motion to Dismiss*

[Defendant's motion denied.]

(Dated March 11, 1982)

*Jack Tyler, pro se.*

*J. Paul McGrath*, Assistant Attorney General; *David M. Cohen*, Director,  
Commercial Litigation Branch (*Francis J. Sailer* on motion), for the defendant.

Re, Chief Judge: In this action for worker adjustment assistance under the Trade Act of 1974, 19 U.S.C. §§ 2101 *et seq.* (1976), defendant moves to dismiss plaintiff's complaint for failure to commence the action within the prescribed sixty (60) day statute of limitations.

On May 15, 1980, plaintiff filed a petition with the Secretary of Labor for certification of eligibility for adjustment assistance benefits on behalf of the present and former employees of International Telephone & Telegraph Corporation, ITT Hancock Industries Division, Elsie, Michigan. Upon consideration of the petition, the Secretary determined that plaintiff was ineligible to apply for worker adjustment assistance, and, on January 27, 1981, published his determination in 46 Fed. Reg. 8805. Thereafter, by undated letter, postmarked February 28, 1981, plaintiff applied for administrative reconsideration of the Secretary's negative determination.

By letter dated March 12, 1981, the Secretary, through his designee, Marvin M. Fooks, Director, Office of Trade Adjustment Assistance, informed plaintiff that his application for reconsideration had been dismissed "for failure to allege sufficient grounds upon which a determination regarding the application may be made." The letter stated that the dismissal constituted a final determination for purposes of judicial review. It further informed plaintiff that he had sixty days from the date of receipt of the letter to file an action contesting the Secretary's negative determination "with the U.S. Court of International Trade in New York City (formerly the U.S. Customs Court)."

Plaintiff, acting *pro se*, endeavored to commence an action in this court. He mailed an undated letter in an envelope postmarked April 27, 1981, addressed as follows:

U.S. Court of International Trade  
New York City  
New York  
10001.

The Postal Service returned the letter to the plaintiff with the notation:

RETURNED TO WRITER  
INSUFFICIENT ADDRESS  
NEW YORK, NEW YORK.

Plaintiff made a second effort to commence this action. Enclosing the first letter and envelope, he mailed a second undated letter in an envelope, postmarked May 27, 1981, addressed as follows:

Customs Court  
1st Federal Plaza  
New York City, New York  
10001.

The Office of the Clerk of this court, by letter dated June 3, 1981, informed plaintiff that his first undated letter fulfilled the requirements of a summons and complaint for the commencement of a civil action to review the Secretary of Labor's final determination. That letter also stated that the *filing* of the summons and complaint was deemed made on June 2, 1981, the date on which the court received plaintiff's second letter.

Subsequently, the defendant filed this motion to dismiss. Defendant maintains that the sixty-day statute of limitations, as prescribed in section 284(a) of the Trade Act of 1974, 19 U.S.C. § 2395(a), as added by the Customs Courts Act of 1980, Pub. L. No. 96-417, 94 Stat. 1727, 1746, began to run on March 12, 1981, the date of the mailing of the Secretary's denial of plaintiff's request for administrative reconsideration, and ran through May 11, 1981. Since plaintiff did not commence the present action until June 2, 1981, some eighty-two (82) days after the mailing of the March 12 letter, defendant contends that this court lacks jurisdiction to entertain plaintiff's request for judicial review.

The question presented is whether the statute of limitations commenced to run on March 12, 1981, the date of the mailing of the Secretary's letter dismissing plaintiff's application for administrative reconsideration, as contended by defendant, or whether further administrative action was required in order for the commencement of the statutory sixty-day period.

Citing *Microwave Communications, Inc. v. F.C.C.*, 515, F. 2d 385, 389 (D.C. Cir. 1974), Fed. R. App. P. 26(b), and *Pennsylvania v. I.C.C.*, 590 F. 2d 1187, 1193 (D.C. Cir. 1978), defendant contends that the sixty-day statute of limitations of section 284(a) for the filing of this action is "jurisdictional and unalterable." Defendant further contends that judicial review is precluded when an action is instituted beyond the statutorily prescribed period. *Id.* See also *Selco Supply Co. v. U.S. Environmental Protection Agency*, 632 F. 2d 863 (10th Cir. 1980). Had the statute of limitations commenced to run on March 12, 1981, as contended by defendant, judicial review would be precluded. A careful review of the administrative record, however, reveals that the Secretary of Labor failed to comply with the applicable statute and regulations for the commencement of the statutory sixty-day period.

It is firmly established that an executive agency is bound to respect a valid regulation which, while in effect, "has the force of law." *United States v. Nixon*, 418 U.S. 683, 695 (1974). This is particularly true when the rights of individuals are affected. *Vitarelli v. Seaton*, 359 U.S. 535 (1959).

Pursuant to 29 C.F.R. § 90.18(a) (1980), plaintiff filed an application

for reconsideration of the Secretary's negative certification determination of January 27, 1981. The Secretary's letter of March 12, 1981 informed plaintiff that a negative determination was made on his application for reconsideration, and that the determination was final for purposes of judicial review.

Section 223(c) of the Trade Act of 1974, 19 U.S.C. § 2273(c), (1976), expressly requires that the Secretary of Labor, upon reaching a final determination on a petition for certification of eligibility, "shall promptly publish a summary of the determination in the Federal Register together with his reasons for making such determination." In furtherance of that duty, 29 C.F.R. § 90.18(e) of Labor's published regulations<sup>1</sup> specifically requires:

Upon reaching a determination that an application for reconsideration does not meet the requirements of paragraph (c) of this section, the certifying officer shall issue a negative determination \* \* \* and *shall promptly publish in the Federal Register a summary of the determination*, including the reasons therefor. Such summary shall constitute a Negative Determination Regarding Application for Reconsideration. *A negative determination issued pursuant to this paragraph shall constitute a final determination for purposes of judicial review* \* \* \*. (Emphasis added.)

The record in this case, however, fails to disclose any publication of the negative determination of the application for reconsideration. Hence, the Secretary has failed to comply with the publication requirements of the statute and regulations.

An action challenging the Secretary's final determination must be commenced pursuant to section 284(a) of the Trade Act of 1974, 19 U.S.C. § 2395(a) (1976), as added by the Customs Courts Act of 1980, "within sixty days after notice of such determination." Not only do the regulations (29 C.F.R. §§ 90.18(e) and 90.19(a) (1980)) require publication in the Federal Register, but the language of 29 C.F.R. § 90.19(a) makes it clear that the date of publication commences the running of the sixty-day statute of limitations. 29 C.F.R. § 90.19(a) explicitly states that the aggrieved party must seek judicial recourse "in the appropriate court<sup>2</sup> within sixty (60) days after the notice of determination has been published in the Federal Register." (Emphasis added.)

<sup>1</sup> Section 248 of the Trade Act of 1974, 19 U.S.C. § 2320 (1976), authorizes the Secretary of Labor to prescribe regulations for the implementation of the provisions of the Act on worker adjustment assistance. See 29 C.F.R. §§ 90.1 et seq. (1980).

<sup>2</sup> "[T]he appropriate court" is a reference to the United States courts of appeal. The Department of Labor has not amended this regulation to reflect the change in jurisdiction resulting from the Customs Courts Act of 1980. The court does not believe that this technical defect impairs the applicability of the regulation to the instant action. In fact, the court deems the regulation to require that judicial review be had in the Court of International Trade since it is the appropriate court.

The identical question was considered by the Court of Appeals for the Third Circuit in *Timex Components, Inc., Former Employees v. Marshall*, No. 80-2531 (3d Cir. Oct. 6, 1981) (*per curiam*). In the *Timex Components* case, the court rejected the contention of both the petitioners and the Labor Department that the statute of limitations began to run as of the date of a letter from the Department informing petitioners of the Secretary's final determination.<sup>3</sup> The court held that the "language of the statute as well as the regulations" explicitly provides that the statute of limitations commences to run from the date of publication of the notice of a final determination in the Federal Register. *Timex*, Slip Op. at 3.

The defendant's contention, that the mailing of the March 12, 1981, letter is the operative fact for the commencement of the prescribed statute of limitations, must fail for an additional reason. 29 C.F.R. § 90.34 (1980) states:

Formal notice of a \* \* \* negative determination shall be transmitted promptly to the group of workers concerned \* \* \* whenever such notices are published in the Federal Register.

From this regulation it is evident that the March 12 letter is the Secretary of Labor's informal method of informing plaintiff of his final determination. The letter does not serve as the notice required by the statute and the implementing regulations.

The March 12 letter incorrectly stated the date commencing the time period within which plaintiff could seek judicial review of the Secretary's negative determination on the application for reconsideration. The letter advised plaintiff that he had sixty days from the date of receipt of the letter to file an action with this court. That statement, it may be observed, is inconsistent with defendant's assertion on this motion that the crucial date is the date of mailing of the letter. In any event, it is clear that both contentions contravene Labor's applicable regulation, 29 C.F.R. § 90.19 (a).

Since the Secretary undertook to inform plaintiff of the name and location of this court, he should have provided the plaintiff with the court's complete address and phone number.<sup>4</sup> The Secretary's letter should also have advised the plaintiff that further information regarding the commencement of an adjustment assistance action could be obtained from the Office of the Clerk, United States Court of International Trade. In view of the relatively short statute of limitations, this information would have reduced the likelihood of confusion, especially for those proceeding *pro se*, as in this case. The cost and administrative burden of conveying the additional

<sup>3</sup> The court noted that while the Labor Department adopted that position during oral argument, it took a contrary position in its brief.

<sup>4</sup> United States Court of International Trade, 1 Federal Plaza, New York, New York 10007, 212-264-2800.

information is minimal when compared with the benefits reaped by the parties and the court in devoting their efforts to the merits of the case rather than to procedural issues.

Since the Secretary of Labor failed to comply with the publication requirements of section 223(c) of the Trade Act of 1974 and 29 C.F.R. § 90.18(e), the sixty-day statute of limitations has not begun to run against the *pro se* plaintiff. Defendant's motion to dismiss is therefore denied.

Under the circumstances presented, however, the Secretary of Labor already has made his final determination; he has communicated it to the plaintiff; and the parties are now before the court. To order the Secretary to publish the required notice of his final determination would only exalt form over substance.

For the foregoing reasons, and to obviate the additional expenditure of time and money in the commencement of a new action, in the interests of justice and sound judicial administration, the defendant is hereby ordered to file its answer no later than May 10, 1982.

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(Slip Op. 82-18)

UNITED STATES OF AMERICA, PLAINTIFF, *v.* SERVITEX, INC.,  
DEFENDANT

Court No. 81-4-00361

Before LANDIS, *Judge*.

*Memorandum Opinion and Order*

[Plaintiff's motion for entry of a default judgment granted.]

(Dated March 11, 1982)

*J. Paul McGrath*, Assistant Attorney General; *David M. Cohen*, Director, Commercial Litigation Branch (*Sandra P. Spooner* on the motion), for the plaintiff.

LANDIS, Judge: This is an action for damages commenced by the United States on April 6, 1981 pursuant to section 592 of the Tariff Act of 1930, as amended [19 U.S.C. § 1592]. This Court has jurisdiction of the action pursuant to 28 U.S.C. § 1582.

Plaintiff moves for entry of a default judgment. Defendant has not answered the complaint and has not responded to the motion for entry of a default judgment.

Accordingly, plaintiff's motion for entry of a default judgment is granted.

A question arises whether interest shall be imposed and, if imposed, the effective date and the rate thereof. Plaintiff contends that interest should be imposed from the date of importation of the merchandise (the latest importation being over five years ago) and that the rate should be twelve percent per annum using section 6621 of the Internal Revenue Code of 1954 as a guide for the rate to be imposed.<sup>1</sup>

In reviewing the statutory enactments applicable to this Court only certain specific provisions relating to interest are found.<sup>2</sup> Although 28 U.S.C. § 2644 and 19 U.S.C. § 1677g mandate interest in certain instances, said sections are specifically directed toward well-defined actions and, as such, are not applicable to section 592 actions herein. Therefore, the court lacks the authority to use these sections to enlarge the legislative mandate narrowly defined by the sections.

The enactment of the Customs Courts Act of 1980<sup>3</sup> redefined the jurisdiction of this Court and with certain exceptions bestowed upon it all powers in law and equity possessed by a District Court of the United States.<sup>4</sup>

Title 28 provides a general interest provision applicable to all federal district courts. 28 U.S.C. § 1961 states:

Sec. 1961. Interest

Interest shall be allowed on any money judgment in a civil case recovered in a district court. Execution therefor may be levied by the marshal, in any case where, by the law of the State in which such court is held execution may be levied for interest on judgments recovered in the courts of the State. Such interest shall be calculated from the date of entry of the judgment, at the rate allowed by State law.

This provision is equally applicable to this Court under 28 U.S.C. § 1585 there being no comparable general interest provision specifically enacted for this Court.<sup>5</sup>

<sup>1</sup> Plaintiff has submitted a copy of a similar judgment on default in *United States of America v. Leslie A. Moritz, et al.*, entered by Judge Maletz on October 5, 1981. Judge Maletz has recently abrogated this order and vacated said default on February 23, 1982.

<sup>2</sup> This Court is mandated to impose interest charges on judgments pursuant to section 515 of the Tariff Act of 1930 [19 U.S.C. § 1515] pursuant to 28 U.S.C. § 2644. Such interest is calculated from the date of the filing of the summons to the date of refund. Interest is payable at an annual rate established under section 6621 of the Internal Revenue Code of 1954 [26 U.S.C. § 6621].

<sup>3</sup> 19 U.S.C. § 1677g mandates that interest be paid on overpayments and underpayments of amounts deposited on merchandise entered or withdrawn from warehouse, for consumption on and after the date on which notice of an affirmative determination by the Commission under 19 U.S.C. § 1671d (b) or 19 U.S.C. § 1673d (b) is published. Interest is payable at 8 percent per annum or the rate in effect under 16 U.S.C. § 6621, whichever is higher.

<sup>4</sup> October 10, 1980, P.L. 96-417, Title III, Sec. 301, 94 Stat 1728 (effective November 1, 1980, as provided by section 701(a) of such Act, 28 U.S.C. § 251 note).

<sup>5</sup> 28 U.S.C. § 1585 states:

The Court of International Trade shall possess all the powers in law and equity of, or as conferred by statute upon, a district court of the United States.

<sup>6</sup> Allowance of interest in a Federal civil suit is not a matter of discretion, but is mandatory. Interest is payable on a judgment whether or not the judgment order expressly calls for postjudgment interest. See, *White v. Bloomberg*, 360 F. Supp. 58 (C.D. MD., 1973), aff'd 501 F. 2d 1379.

An examination of 28 U.S.C. § 1961 clearly indicates that it is mandatory, that interest is calculated from the *date of the entry of judgment*, and that the rate of interest is the *rate allowed by State law of the jurisdiction in which the court is located*.

A question arises as to the jurisdiction in which this Court is located. Being a national court, the court conducts trials in various situs' in the United States. However, when a judgment is entered, it is entered in the Clerk's Office located in New York. That is the official place of entry and filing of a judgment. Such judgment, of course, may be registered in any judicial district pursuant to 28 U.S.C. § 1963A by filing a certified copy of such judgment in that district *subsequent to that judgment being entered in the Court of International Trade*.

This Court being located in New York should follow the guidelines of the Federal district courts in New York when it is borrowing upon their statute to grant relief. It should uniformly apply the entire statute and not merely part thereof.

The only remaining question is to the rate of interest in New York. N.Y. Civil Practice Law & Rules, § 5004 (McKinney)<sup>6</sup> states:

Interest shall be at the rate of nine per centum per annum, except where otherwise provided by statute.

The interest rate is, therefore, nine percent.

Ordered and adjudged, plaintiff's motion for the entry of a judgment on default is granted. The Clerk is directed to enter judgment in favor of plaintiff in the amount of 263,248 dollars with interest at the rate of 9 percent from the date of entry of the judgment.

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(Slip Op. 82-19)

NAKAJIMA ALL CO., LTD., PLAINTIFF, v. THE UNITED STATES,  
DEFENDANT, SMITH-CORONA GROUP, CONSUMER PRODUCTS  
DIVISION, SCM CORPORATION, INTERVENOR

Court No. 80-6-00933

Before NEWMAN, Judge.

*Memorandum and Order on Plaintiff's Motion for Disclosure of  
Confidential Documents in the Administrative Record*

[Plaintiff's motion granted.]

(Dated March 12, 1982)

Cabinet Hays, Esqs. (Alan S. Hays, Esq., of counsel) and Paul, Weiss, Rifkind,  
Wharton & Garrison, Esqs. (Harriet L. Goldberg, Esq., of counsel) for the plaintiff.

<sup>6</sup> L 1981, c 258 § 1, passed June 15, 1981, effective June 25, 1981.

*J. Paul McGrath*, Assistant Attorney General, *David M. Cohen*, Director, Commercial Litigation Branch, and *Velta A. Melnbrensis*, Esq., for the defendant. *Eugene L. Stewart* and *Terence P. Stewart*, Esqs., for the intervenor.

NEWMAN, *Judge*: In this action brought under section 516A of the Tariff Act of 1930, as amended (19 U.S.C. § 1516a), plaintiff challenges the Government's antidumping duty determinations concerning portable electric typewriters manufactured by Nakajima All in Japan.

Before me for determination is plaintiff's motion for access to certain confidential documents filed with the Court by the International Trade Commission ("ITC") as part of the Commission's administrative record. Significantly, the very documents now sought by plaintiff were the subject of intervenor SCM's motion for access, which was granted by this Court on October 26, 1981. 2 CIT —, Slip Op. 81-95 (1981). Inasmuch as the documents now sought by plaintiff were previously disclosed to SCM pursuant to my order of October 26, 1981, defendant understandably has now declined to oppose their disclosure to plaintiff, and has instead deferred to the discretion of the Court. SCM, however, objects to plaintiff's motion on the ground that the documents sought by plaintiff are irrelevant, notwithstanding that SCM's prior motion for disclosure of the documents was granted.

I am unable to agree with SCM's objection which is predicated on the ground that the documents are irrelevant because only the fair value determination of the Department of Commerce is in issue.

Plaintiff's complaint (paragraph 2(b)) specifically challenges the final determination of material injury made by the International Trade Commission in Investigation No. 731-TA-12 (Final), published in the Federal Register on May 7, 1980 (45 FR 30186), and alleges, *inter alia*, that "notice was given to all interested parties who were parties to the proceedings before the Commerce Department and the USITC" (emphasis added). Additionally, the complaint (paragraph 6) alleges that the "determinations of the Commerce Department and the USITC contested herein are not supported by substantial evidence and are not in accordance with law" (emphasis added); and again in its "Statement of Claim" plaintiff asserts that the determination of material injury by the ITC is not supported by substantial evidence and is otherwise not in accordance with law. Finally, plaintiff's "Demand for Judgment and Relief" asks, *inter alia*, that this Court hold "the determination by the USITC that sales by plaintiff at less than fair value materially injured a domestic industry was not supported by substantial evidence and was otherwise not in accordance with law," and requests that this Court vacate the *Final Determination of Material Injury made by the USITC*. Clearly, then, the complaint filed in this

action has challenged the action of the ITC, as well as that of the Department of Commerce.

Although plaintiff concedely does not seek "full" review in this Court of the injury determination made by the ITC, there has as yet been no limitation or delineation of the issues by stipulation, pretrial conference, or otherwise. Indeed, plaintiff insists that the ITC documents "may contain information important to plaintiff's case". In short, absent an explicit limitation of the issues in this case or a withdrawal by plaintiff of its claims concerning the ITC's determination, and particularly in view of the previous disclosure of the documents to SCM, I fail to see how the documents could now be held irrelevant for purposes of discovery.

SCM also opposes plaintiff's motion on the ground that plaintiff has failed to demonstrate a "specific need" for the documents, citing *Roses, Inc. v. United States*, 1 CIT —, Slip Op. 81-4 (1981). The Court, in *Roses, Inc.*, observed: "Without evidence of a specific need, there is nothing to weigh against the governmental policy and need to protect the confidentiality of executive communications". It must be stressed that here the Government has not interposed an objection to plaintiff's motion, but has deferred to the discretion of this Court; and further, the documents have heretofore been made available to SCM's outside counsel. SCM's outside counsel has not shown how SCM would be prejudiced if the documents were now made equally available to plaintiff's outside counsel. Under these circumstances, the rationale of *Roses, Inc.* is simply inapposite. Now that defendant and SCM's outside counsel have access to the documents in question, equity and fundamental fairness require that outside counsel for plaintiff be granted similar access. I conclude, therefore, that SCM's objections are without merit, and plaintiff's motion is granted on the following terms and conditions:

A. Within 15 days from the date of the entry of this order, defendant will serve upon plaintiff's outside counsel, Paul, Weiss, Rifkind, Wharton & Garrison, a copy of the following documents enumerated on List No. 2, Confidential Documents Transmitted to the United States Court of International Trade, constituting part of the administrative record filed with the Court in connection with the Commission's Inv. No. 731-TA-21 (Final): Portable Electric Typewriters from Japan, which documents are deemed confidential for purposes of this order, subject to the terms and conditions set forth in point B below:

(i) Document 19: Prehearing report: Portable Electric Typewriters from Japan, Investigation No. 731-TA-12, March 19, 1980;

(ii) Document 20: Transmittal form entering in the record "Confidential prehearing report to the Commission on Portable

Electric Typewriters from Japan." Attachment: Prehearing Report to the Commission and Parties on Preliminary Findings of Fact: Portable Electric Typewriters from Japan, Investigation No. 731-TA-12 (Final), Washington, D.C., March 24, 1980;

(iii) Document 28: Transmittal form entering in the record the final Report to the Commission: Portable Electric Typewriters from Japan, Investigation No. 731-TA-12 (Final), Washington, D.C., April 14, 1980;

(iv) Document 29: Transmittal form entering into the record—Memorandum, OP2-D-087, 4-9-80, regarding lost sales;

(v) Document 35: Transmittal form entering in the record the following: Report to the Commission: Portable Electric Typewriters from Japan, Investigation No. 731-TA-12 (Final), Washington, D.C., April 14, 1980;

(vi) Document 38: Transmittal form entering in the record the Chronological Chart and Pros and Cons (excluding the Chronological Chart and Pros and Cons);

(vii) Document 39: Chronological Chart; and

(viii) Document 41: Transcript of Commission Meeting, April 22, 1980: Briefing (CLOSED SESSION). Portable Electric Typewriters from Japan (Investigation No. 731-TA-12 (Final)).

B. The documents listed in A above are to be made available subject to the following protective terms and conditions:

(1) Outside Counsel for plaintiff shall not disclose the confidential information to anyone other than the immediate office personnel actively assisting in this litigation; and in no event shall outside counsel disclose the confidential information to plaintiff or its in-house counsel or other representatives, agents, or employees;

(2) Outside counsel for plaintiff and such counsel's immediate office personnel shall not disclose or use any of the confidential information for purposes other than this litigation;

(3) Any documents, including briefs and memoranda, which are filed with the Court in this case containing any of the confidential information shall be conspicuously marked as follows:

"Confidential"—Subject to Protective Order. This contains material filed by (*name of party*) for the purpose of this litigation only. It is not to be opened other than by the Court, nor are the contents hereof to be displayed or revealed other than to the Court, except by Court Order or by agreement of the parties.

Arrangements shall be made with the Clerk of this Court to retain such documents under seal, permitting access only to the Court, Court personnel authorized by the Court to have

access, and outside counsel for the parties; copies of all the confidential documents, but with the confidential information deleted, shall be filed with the Court at the same time that the documents containing the confidential information are filed;

(4) Any briefs or memoranda containing confidential information shall be served by or upon all parties in a wrapper conspicuously marked on the front; "Confidential—to be opened only by (the names of the attorneys handling the case)," and shall be accompanied by a separate copy from which all the confidential information has been deleted;

(5) If it should become necessary to introduce in evidence any documents containing the confidential information, counsel for the respective parties may propose whatever mechanism may be available and appropriate to limit publication of the documents to an extent no wider than is necessary for purposes of this litigation;

(6) Upon conclusion of this litigation, counsel for plaintiff shall return all documents containing confidential information to counsel for the defendant United States, and any copies made of such documents, including any documents or copies held by persons authorized under this order to have access thereto, except for copies which contain work notes of counsel for plaintiff (or authorized personnel) which shall be destroyed.

# Decisions of the United States Court of International Trade

## *Abstracts Abstracted Protest Decisions*

DEPARTMENT OF THE TREASURY, *March 15, 1982.*

The following abstracts of decisions of the United States Court of International Trade at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

WILLIAM VON RAAB,  
*Commissioner of Customs.*

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED		HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate			
P82/12	Re, C.J. March 10, 1982	Sanyo Electric Inc.	79-11-01752	Item 683.70 35%	Item 688.40 5.5%		Sanyo Electric Inc. v. U.S. (C.D. 4655, aff'd C.A.D. 1283)	New York Power failure lights

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED		BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	HELD Par. or Item No. and Rate		
P82/13	Landis, J. March 10, 1982	Border Brokerage Co., Inc., s/c Letson & Burpee	78-3-00821	Item 674.53 7%	Item 660.85 4.5%	Agreed statement of facts	Blaine (Seattle) Air cylinders, hydraulic cylinders, and parts
P82/14	Landis, J. March 10, 1982	The Copeland Co., Inc., s/c Go Young International, Inc.	79-6-00055	Item 734.77 7.5%	Item A734.77 Duty free pursuant to GSP	Agreed statement of facts	Miami Golf equipment; products of eligible beneficiary country
P82/15	Landis, J. March 10, 1982	North American Foreign Trading Corporation	79-4-00811	Item 683.40 5.5%	Item A683.40 Free of duty pursuant to Ex. Order 11888 of 11-24-75	Agreed statement of facts	New York Calculator blackjack imported from Taiwan
P82/16	Landis, J. March 10, 1982	North American Foreign Trading Corp.	79-11-01730	Item 676.20 5%	Item A676.20 Free of duty pursuant to Ex. Order 11888 of 11-24-75	Agreed statement of facts	New York Model 700 RM rechargeable calculators imported from Taiwan
P82/17	Landis, J. March 10, 1982	Sumitomo Corporation of America	79-9-01462, etc.	Item 610.80 11%	Item 660.15 7%	Agreed statement of facts	Philadelphia Parts of economizers and auxiliary plants for use with steam and other vapor generating boilers

P82/18	Landis, J. March 10, 1982	Weyerhaeuser et al.	78-4-00557, etc.	Item 674.53 7%	Item 652.18 6%	Agreed statement of facts	Seattle slat bed assemblies and slat bed chains
P82/19	Bee, J. March 10, 1982	Litronix, Inc.	79-5-00681	Item 720.40 22.75%	Item 685.70 14%	U.S. v. Texas Instruments, Inc. (C.A.D. 1243)	San Francisco Watch displays
P82/20	Landis, J. March 12, 1982	Alvaska Pipeline Service Company	79-7-01066, etc.	Item 657.20 9.5%	Item 652.94 3.5%	Agreed statement of facts	Anchorage (Juneau) Split rings imported with support brackets of iron or steel
P82/21	Landis, J. March 12, 1982	Cal Custom Hawk	78-7-01266	Item 648.97 11%	Item 660.52 4%	Agreed statement of facts	Los Angeles Wing nuts, etc.
P82/22	Maletz, J. March 12, 1982	Coleco Industries, Inc.	79-9-01478	Item 735.20 10%	Item 734.20 5.5%	APR Electronics Inc. v. U.S. (C.D. 4784)	JFK Int'l Airport (New York) Printed circuit boards
P82/23	Maletz, J. March 12, 1982	Jimlar Corporation	79-6-00645	Item 700.60 30%	Item 770.70 10%	International Seaway Trad- ing Corp. v. U.S. (C.D. 4773)	New York Footwear
P82/24	Newman, J. March 12, 1982	Behring Diagnostics Inc.	79-12-01827	Item 769.00 5%	Item 437.76 Free of duty	Certified Blood Donor Serv- ices, Inc. v. U.S. (C.D. 4830) Certified Blood Donor Serv- ices, Inc. v. U.S. (C.A.D. 1147)	New York Various diagnostic sera

# Decisions of the United States Court of International Trade

## *Abstracts* *Abstracted Reappraisement Decisions*

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
RS2/130	Maletz, J. March 4, 1982, on motion to correct error in decision and judgment of September 24, 1981 (Alta. R81/356); correction provides for inclusion of interest on monetary relief obtained	Wanis Co.	80-12-00187	Export value	Rs. 28,708 per piece, net packed	Agreed statement of facts	New York 1,000 pieces of pure silk "Kurtas" (ladies tops)

R82/131	Re, C.J. March 10, 1982	Sunglass Products of California	73-6-01344, etc.	Export value	Appraised values specified on entry papers by liquidating officer, less any additions included in appraised values which reflect currency revaluation	C.B.S. Import Corp. v. U.S. (C.D. 4739)	San Francisco Miscellaneous merchandise
R82/132	Landis, J. March 10, 1982	Amarax Trading Corp.	76-6-01528	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Oakland (San Francisco) Knives, forks, and spoons
R82/133	Landis, J. March 10, 1982	Hazan Mercantile Co.	R65/16457	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values (schedule "A" merchandise) Appraised unit values less 7.5% thereof (schedule "B" merchandise)	Agreed statement of facts	New York Cotton shirts, gloves, and binoculars
R82/134	Landis, J. March 10, 1982	Jet-Aer Corporation	79-8-01319	Export value	Appraised values shown on entry papers less additions included to reflect buying commissions	Agreed statement of facts	New York Not stated
R82/135	Landis, J. March 10, 1982	Mitsubishi International Corporation	73-10-02874, etc.	American selling price	Appraised values less 23% per pair	Agreed statement of facts	Honolulu Footwear

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R82/136	Watson, J. March 10, 1982	Adorence & Co.	270180-A, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Gloves, scarves, and sweaters
R82/137	Watson, J. March 10, 1982	Astra Trading Corp.	279449-A, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Binoculars
R82/138	Watson, J. March 10, 1982	Geigy Chemical Corporation	R66/5682	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisal; less 33.4% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisal; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1186)	New York Benzenoid dyestuffs

E82/139	Watson J. March 10, 1982	Gelgy Chemical Corporation	E69/6393	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisal; less 28.9% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisal; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Gelgy Chemical Corporation et al. (C.A.D. 1186)	New York Benzamide dyestuffs
E82/140	Watson, J. March 10, 1982	Kreiss Corporation	E63/5336, etc.	Export value		Agreed statement of facts	Los Angeles China ware

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R82/141	Watson, J. March 10, 1982	National Silver Co.	R6/7650, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	San Francisco Flatware and ceramic products
R82/142	Landis, J. March 11, 1982	Mitsubishi International Corporation	76-10-02363, etc.	American selling price	Appraised values less 23% per pair	Agreed statement of facts	Miami Footwear
R82/143	Landis, J. March 11, 1982	Mitsubishi International Corporation	76-10-02365, etc.	American selling price	Appraised values less 23% per pair	Agreed statement of facts	Los Angeles Footwear
R82/144	Landis, J. March 11, 1982	Mitsubishi International Corporation	77-5-00812, etc.	American selling price	Appraised values less 23% per pair	Agreed statement of facts	New York Footwear
R82/145	Landis, J. March 11, 1982	Mitsubishi International Corporation	78-4-00705, etc.	American selling price	Appraised values less 23% per pair	Agreed statement of facts	New Orleans Footwear
R82/146	Landis, J. March 11, 1982	Mitsubishi International Corporation	80-2-00286	American selling price	Appraised values less 23% per pair	Agreed statement of facts	San Francisco Footwear
R82/147	Landis, J. March 11, 1982	New York Merchandise Co., Inc.	75-5-01065	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Knives, forks, and spoons

R82/148	Re, C.J. March 12, 1982	Atlas Rand Keystone, c/o Berkley Photo, Inc., et al.	73-1-00320, etc.	Export value	Appraised unit values found by appraising customs official less additions included in appraised values to reflect currency reval- uation	C.B.S. Imports Corp. v. U.S. (C.D. 473)	New York Various articles
R82/149	Re, C.J. March 12, 1983	Marubeni America Corp.	73-11-02017	Export value	Unit values found by appraising customs official, less ocean freight and marine insurance, and with- out additions for cur- rency fluctuation	C.B.S. Imports Corp. v. U.S. (C.D. 473)	New York; Los Angeles; Boston; San Francisco; Norfolk Various articles
R82/150	Landis, J. March 12, 1982	Bar-Zel Expeditors	73-6-01172	Cost of production	Column 6 values, plus packing, using correct commercial currency exchange rate (.024066) in effect for merchan- dise exported from Hungary between 3/24/76 and 11/30/76	Agreed statement of facts	New York Tires and tubes from Hungary
R82/151	Landis, J. March 12, 1982	Bar-Zel Expeditors	73-6-01173	Cost of production	Column 6 values, plus packing, using correct commercial currency exchange rate (.024066) in effect for merchan- dise exported from Hungary between 3/24/76 and 11/30/76	Agreed statement of facts	New York Tires and tubes from Hungary
R82/152	Landis, J. March 12, 1983	Samuel Brilliant Co.	81-2-00205	Export value	Invoice unit values, net, packed	Agreed statement of facts	New York Men's skinnable boots

# International Trade Commission Notices

*Investigations by the U.S. International Trade Commission*

DEPARTMENT OF THE TREASURY, MARCH 24, 1982

The appended notices relating to investigations by the U.S. International Trade Commission are published for the information of Customs officers and others concerned.

WILLIAM VON RAAB,  
*Commissioner of Customs.*

In the Matter of  
CERTAIN COIN-OPERATED  
AUDIOVISUAL GAMES AND  
COMPONENTS THEREOF (VIZ  
RALLY-X AND PAC-MAN)

} Investigation No. 337-TA-105

*Notice of Settlement Agreement, Recommended Termination, and Request  
For Public Comments*

AGENCY: U.S. International Trade Commission.

ACTION: Request for public comments on the recommended termination of the investigation with respect to respondent Fernandez Fun Factory, Inc., on the basis of a settlement agreement.

SUMMARY: Notice is hereby given that the presiding officer in this investigation has recommended that the Commission grant the joint motion of the complainant, Midway Manufacturing Co., and respondent Fernandez Fun Factory, Inc., and the Commission investigative attorney to terminate this investigation with respect to respondent Fernandez on the basis of a settlement agreement. Before taking final action on the motion, the Commission seeks written comments on the proposed termination from interested members of the public.

**DEADLINE:** All comments must be received within thirty (30) days of publication of this notice.

**SUPPLEMENTARY INFORMATION:** The Commission is conducting Investigation No. 337-TA-105 to determine whether there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation into the United States of certain coin-operated audiovisual games and components thereof (viz Rally-X and Pac-Man), or in their sale, which are alleged to infringe complainant Midway's common law trademarks PAC-MAN and RALLY-X, and to infringe its copyrights covering the audiovisual works for the PAC-MAN and RALLY-X games, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

On January 12, 1982, complainant Midway, respondent Fernandez, and the Commission investigative attorney filed a joint motion (Motion No. 105-37) pursuant to 19 CFR § 210.51, to terminate the investigation with respect to respondent Fernandez on the basis of a settlement agreement. On February 11, 1982, the presiding officer recommended that the motion be granted. The settlement agreement and the proposed termination are now before the Commission for final action.

Under the settlement agreement, Fernandez will surrender to Midway all "Read-Only-Memory" programs which are alleged to infringe Midway's copyright and common law trademark rights. Fernandez will pay a sum certain to Midway. Additionally, both Fernandez and Midway agree to release each other from all claims in this proceeding and in a parallel Federal court proceeding.

A nonconfidential version of the agreement is available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202-523-0471.

All comments must conform to the requirements of section 201.8 of the Commission's rules (19 CFR § 210.8) and must be addressed to the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436.

**FOR FURTHER INFORMATION CONTACT:** Scott M. Daniels, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Room 230, Washington, D.C. 20436, telephone 202-523-0350.

By order of the Commission.

Issued: March 18, 1982.

KENNETH R. MASON,  
*Secretary.*

*Notice of Termination of Investigation No. 701-TA-151 (Preliminary)  
Certain Nuts, Bolts, and Screws From Japan*

AGENCY: U.S. International Trade Commission.

ACTION: Termination of preliminary countervailing duty investigation and cancellation of conference.

FOR FURTHER INFORMATION CONTACT: Mr. John MacHatton, Supervisory Investigator, Telephone No. 202-523-0439

SUPPLEMENTARY INFORMATION: On March 1, 1982, following receipt of a petition filed on behalf of the United States Fastener Manufacturing Group, the Commission instituted, effective February 22, 1982, preliminary countervailing duty investigation No. 701-TA-151 (Preliminary), certain nuts, bolts, and screws from Japan. The purpose of the investigation was to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry is materially retarded by reason of allegedly subsidized imports from Japan of certain nuts, bolts, and screws provided for in items 646.4920, 646.5400, 646.5600, 646.6320, and 646.6340 of the Tariff Schedules of the United States (1982).

On March 16, 1982, the Commission received a copy of a letter on behalf of the petitioner to the Department of Commerce withdrawing the petition for the subject investigation. As a result of this withdrawal the Department of Commerce will not initiate an investigation. Therefore, pursuant to its authority under section 207.13 of the Commission's Rules of Practice and Procedure, the Commission's investigation concerning these products from Japan is hereby terminated and its conference scheduled for March 18, 1982 is cancelled.

Issued: March 18, 1982.

KENNETH F. MASON,  
*Secretary.*

In the Matter of  
CERTAIN AIRTIGHT CAST-IRON  
STOVES

} Investigation No. 337-TA-106

*Commission Action and Order*

BACKGROUND

On August 26, 1981, the Commission issued consent orders against respondents, Franklin Cast Products, Inc. ("Franklin") and Oriental

Kingsworld Industrial Company, Ltd., in the above-captioned investigation. These consent orders took effect on October 26, 1981. Item 14(c) of the consent orders postponed any obligation by respondents to change the design of their models which are copies of the Vermont Casting, Inc. ("Vermont") stoves until after the entry of judgment by the United States District Court for the District of Vermont in the consolidated civil litigation, *Vermont Casting, Inc. v. Franklin Cast Products, Inc.*, Civ. Act. Nos. 79-265 and 80-162. In addition, Item 14(c) of each consent order states that upon entry of judgment, the Commission shall direct respondents to change their Vermont Casting copies in a manner which shall not be "inconsistent with and/or contrary to the judgment entered in the Vermont Casting litigation."

On December 23, 1981, the District Court in Vermont entered its judgment, permanently enjoining Franklin from manufacturing or distributing stoves "which have an exterior appearance utilizing a design confusingly similar to plaintiff's [Vermont's] trademark, specifically the curved front and double arched doors." As a result of this judgment and pursuant to Item 14(c) of the consent orders, the Unfair Import Investigations Division, on February 22, 1982, recommended that the Commission modify the consent orders it issued in order to ensure that certain of respondents' models will not be copies of Vermont's stoves.

#### ACTION

Having reviewed the Memorandum Opinion and Order of the U.S. District Court for the District of Vermont and the Unfair Import Investigations Division's recommendation regarding modification of the consent orders, the Commission determined on March 11, 1982, that modifying the consent orders in the following manner would be consistent with the judgment in *Vermont Casting*.

#### ORDER

Accordingly, the Commission hereby orders that—

1. Pursuant to Item 14(c) of the consent order issued against Franklin Cast Products, Inc., the consent order shall be modified by adding the following paragraph:

With respect to Scandia models 308, 315 and 320, and any of respondents' stoves closely and substantially similar thereto in shape and appearance such as the Scandia 315 D, 315 G and 320 S, (1) the name "SCANDIA" will appear on the top and both sides of the stove in clear and conspicuous manner, (2) the words "Made in Taiwan" and "Franklin Cast Products, Inc." will appear on at least one side of the stove and the words "Made in Taiwan" will be positioned within two inches of the front of

that panel in letters  $\frac{3}{4}$ " high, (3) the triangular shapes appearing within the upper front corners and the vertically extending rectangles adjacent the doors will be changed to different shapes, (4) the exterior outline of the doors will be changed to be rectangular or to an outline substantially different from that illustrated in the 1980 and 1981 Franklin Cast Products, Inc. catalogs, (5) the vertical ribbing at the center of the doors will be substantially changed from that shown in the 1980 and 1981 Franklin Cast Products, Inc. catalogs, (6) the front wall will be flat, (7) the sides of the Scandia 308, 315 and 320 that do not open will not include a horizontally elongated rectangle in the upper portion of the side panel nor two vertically elongated side by side rectangles in the lower portion, (8) the door of the Scandia 315 will not include three rectangles or squares of decreasing area centrally positioned on the door one inside another, (9) the legs will be changed in shape to be substantially different from the Gambriel leg style illustrated in the 1980 and 1981 Franklin Cast Products, Inc. catalogs.

2. Pursuant to Item 14(c) of the consent order issued against Oriental Kingsworld Industrial Company Ltd., the consent order shall be modified by adding the following paragraph:

With respect to Scandia models 308, 315 and 320, and any of respondents' stoves closely and substantially similar thereto in shape and appearance such as the Scandia 315 D, 315 G and 320 S, (1) the name "SCANDIA" will appear on the top and both sides of the stove in clear and conspicuous manner, (2) the words "Made in Taiwan" and "Franklin Cast Products, Inc." will appear on at least one side of the stove and the words "Made in Taiwan" will be positioned within two inches of the front of that panel in letters  $\frac{3}{4}$ " high, (3) the triangular shapes appearing within the upper front corners and the vertically extending rectangles adjacent the doors will be changed to different shapes, (4) the exterior outline of the doors will be changed to be rectangular or to an outline substantially different from that illustrated in the 1980 and 1981 Franklin Cast Products, Inc. catalogs, (5) the vertical ribbing at the center of the doors will be substantially changed from that shown in the 1980 and 1981 Franklin Cast Products, Inc. catalogs, (6) the front wall will be flat, (7) the sides of the Scandia 308, 315 and 320 that do not open will not include a horizontally elongated rectangle in the upper portion of the side panel nor two vertically elongated side by side rectangles in the lower portion, (8) the door of the Scandia 315 will not include three rectangles or squares of decreasing area centrally positioned on the door one inside another, (9) the legs will be changed in shape to be substantially different from the Gambriel leg style illustrated in the 1980 and 1981 Franklin Cast Products, Inc. catalogs.

3. The Secretary shall serve a copy of this Action and Order upon each party of record in this investigation.

By order of the Commission.

Issued: March 15, 1982.

KENNETH R. MASON,  
*Secretary.*

In the Matter of  
CERTAIN HOT AIR CORN POPPERS  
AND COMPONENTS THEREOF

Investigation No. 337-TA-101

*Notice of Termination of Investigation as to Four Respondents*

AGENCY: U.S. International Trade Commission.

ACTION: Termination of investigation No. 337-TA-101 as to four respondents.

SUMMARY: Notice is hereby given that the Commission has granted two joint motions filed by the complainant and four respondents to terminate the investigation with respect to those respondents on the basis of settlement agreements entered into by the parties.

AUTHORITY: The investigation is being conducted pursuant to 19 U.S.C. § 1337(b)(1). The Commission's authority to terminate the investigation in part on the basis of settlement agreements is contained in section 210.51(c) of the Commission's Rules of Practice and Procedure (19 CFR § 210.51(c)).

SUPPLEMENTARY INFORMATION: This investigation is being conducted in order to determine whether there is a violation of section 337 of the Tariff Act of 1930 in the importation of certain hot air corn poppers and components thereof into the United States, or in the sale of such articles, which are alleged to infringe claims 1, 2, 3, and 5 of U.S. Letters Patent 4,178,843, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States. These proceedings were initiated on the basis of a complaint filed on behalf of Wear-Ever Aluminum, Inc., a wholly owned subsidiary of the Aluminum Company of America and the assignee of the patent in question.

*1. Motion No. 101-19*

On October 13, 1981, the complainant and respondents General Electric Co., K Mark Corp., and the Stop & Shop Companies, Inc. filed a joint motion to terminate the investigation with respect to the moving respondents. Termination was sought on the basis of settlement agreements between the complainant and each of the

respondents concerned. The motion was supported by the Commission investigative attorney but opposed by respondent Sunbeam Corp. On November 19, 1981, the presiding officer issued an order recommending that the Commission grant Motion No. 101-19.

Before taking final action on the motions, the Commission published notice of the motions in the Federal Register (46 F.R. 62342, December 23, 1981) along with nonconfidential summaries of the agreements and solicited written comments on the proposed termination from the public and other Federal agencies. No comments adverse to the proposed terminations were received.

## *2. Motion No. 101-28*

On November 23, 1981, the complainant and respondent Hamilton Beach Division—Scovill Inc. filed a joint motion to terminate the investigation with respect to Scovill. The motion was supported by the Commission investigative attorney but opposed by respondents The West Bend Co., A Division of Dart Industries Inc., and Chiap Hua Clocks and Watches Ltd. On December 7, 1981, the presiding officer issued an order recommending that the Commission grant Motion No. 101-28.

Before taking final action on the motion, the Commission published notice of the motion in the Federal Register (47 F.R. 687, January 6, 1982) along with a nonconfidential summary of the settlement agreement and solicited written comments from the public and other Federal agencies regarding the proposed termination. No comments adverse to the proposed termination were received.

On March 11, 1982, the Commission voted to grant Motions Nos. 101-19 and 101-28 and to issue an order terminating the investigation as to respondents General Electric Co., K Mart Corp., the Stop & Shop Companies, Inc. and Hamilton Beach Division—Scovill Inc.

Copies of the motions and the settlement agreements (except for the confidential business information contained therein), the Commission's Action and Order, and all other nonconfidential documents on the record of this investigation are available for public inspection during official business hours (3:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202-523-0471.

FOR FURTHER INFORMATION CONTACT: P. N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Room 224, Washington, D.C. 20436, telephone 202-523-0350.

By order of the Commission.

Issued: March 15, 1982.

KENNETH R. MASON,  
*Secretary.*

In the Matter of  
CERTAIN HIGH-PRECISION  
SOLENOIDS AND COMPONENTS  
THEREOF

} Investigation No. 337-TA-119

*Order No. 1*

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Donald K. Duvall as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the Federal Register.

Issued: March 12, 1982.

DONALD K. DUVAL,  
*Chief Administrative Law Judge.*

In the Matter of  
CERTAIN ULTRAFILTRATION MEM-  
BRANE SYSTEMS AND COMPO-  
NENTS THEREOF, INCLUDING  
ULTRAFILTRATION MEMBRANES

} Investigation No. 337-TA-107

*Notice of Termination of Investigation*

AGENCY: U.S. International Trade Commission.

ACTION: Termination of investigation.

SUPPLEMENTARY INFORMATION: This investigation is being conducted under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) and concerns alleged unfair trade practices in the importation into and sale in the United States of certain ultra-filtration membrane systems and components thereof, including ultra-filtration membranes. The complainants, Amicon Corporation, Romicon, Inc., and Comex, Inc., moved to terminate this investigation on the basis of their concession that there is no violation of section 337. Without making a determination on the question of violation of section 337, the Commission granted the motion and terminated the investigation.

Copies of the Commission's Action and Order, and all other non-confidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Scott Daniels,  
Esq., Office of the General Counsel, telephone 202-523-0074.

By order of the Commission.

Issued: March 11, 1982.

KENNETH R. MASON,  
*Secretary.*

# Index

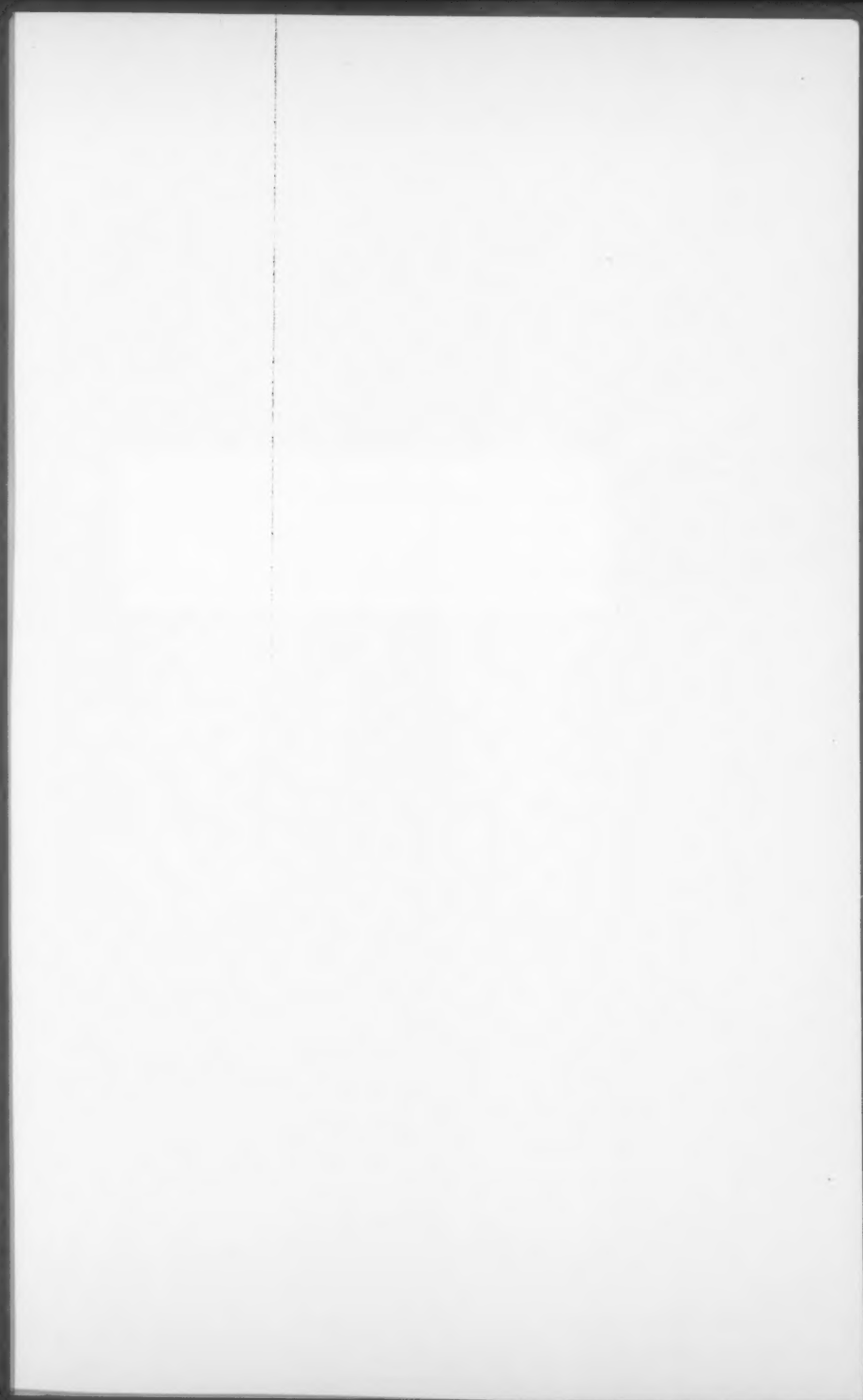
## U.S. Customs Service

Treasury decisions:	T.D. No.
Carrier bonds.....	82-51
Private aircraft arriving in U.S. via the Gulf of Mexico and Atlantic	
Coasts—Sec. 6.14, CR amended.....	82-52

## Court of Customs and Patent Appeals

C. J. Tower & Sons of Buffalo, Inc. v. The United States.....	Appeal No. 81-26
	51





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